

TESTIMONY BY KANOE MARGOL
INTERIM EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 1208, S.D.1, H.D. 1

APRIL 7, 2015, 2:30 P.M.

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Luke, Vice Chair Nishimoto and Members of the Committee,

S.B. 1208, S.D.1, H.D. 1 confirms the authority of the board of trustees of the Employees' Retirement System (ERS) to meet in executive session to consider confidential information related to investments that would be subject to the deliberative process privilege.

The members of the board of trustees have a fiduciary duty to invest the funds of the ERS for the benefit of the system and its members. In order to fulfill this duty, the trustees must consider proprietary information and confidential business information relating to the investments of the system. This information is provided to the trustees and the system on the condition that the system and its trustees keep the information confidential.

Chapter 92 (the "Sunshine Law"), Hawaii Revised Statutes, requires that the trustees deliberate on and make decisions upon matters over which they have supervision and control at meetings open to the public. Although the Sunshine Law allows the trustees to hold meetings closed to the public for certain specified purposes requiring confidentiality, the applicability of these exceptions to the trustees' consideration of confidential information relating to investments has been questioned.

If the board of trustees is unable to consider confidential information relating to the system's investments in executive session, the trustees' fiduciary oversight of the system's investments will be hampered, the system may be precluded from making many types of investments that are beneficial to the system and the system will be placed in a competitive disadvantage when it makes investments or sells investment assets.

S.B. 1208, S.D.1, H.D.1 would authorize the board of trustees of the ERS to hold executive sessions closed to the public in order to consider the types of information or records that would be exempt from disclosure under Hawaii's public records act (chapter 92F, Hawaii Revised Statutes) or under the procurement code (chapter 103D, Hawaii Revised Statutes) or in situations in which disclosure of the information under consideration would result in a competitive disadvantage to the ERS as an investor.

The Board of Trustees of the ERS strongly supports this proposal.

Thank you for the opportunity to testify on this important measure.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: April 7, 2015, 2:30 p.m.
State Capitol, Conference Room 308

Re: Testimony on S.B. No. 1208, S.D. 1, H.D. 1
Relating to the Employees' Retirement System.

Thank you for the opportunity to submit testimony on this bill, which would allow the Board of Trustees (Board) of the Employees' Retirement System ("ERS") to discuss certain matters in meetings closed to the public. The Office of Information Practices ("OIP")'s previous concerns about the broad nature of a proposed exemption from the Sunshine Law, part I of chapter 92, HRS, were resolved by the H.D. 1 draft of the bill and OIP does not object to the Sunshine Law exemptions created by the bill in its current form.

Thank you for the opportunity to submit testimony.

LATE

GRASSROOT

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April 7, 2015
2:30 PM
Conference Room 308

To: House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Nishimoto, Vice Chair

From: Grassroot Institute of Hawaii
President Keli'i Akina, Ph.D.

RE: SB 1208 -- RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM
Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on SB 1208, which would authorize the Board of Trustees of the Employees' Retirement System to hold meetings closed to the public to discuss certain matters.

Given the state of Hawaii's unfunded liabilities and their importance to the state's economic future, we have grave concerns about any initiative that would allow the Board of Trustees to carry out its activities in secret. Transparency in the decision making process of the Board is the only way to ensure that the best interests of both Hawaii's public employees and taxpayers are taken into account.

In order to create an exception to existing Sunshine law for this particular Board, there should be a significant and compelling interest to justify it. To do otherwise would be to foster an atmosphere conducive to the kind of back-room deal-making that the law is intended to prevent.

Thank you for the opportunity to submit our comments.

Sincerely,
Keli'i Akina, Ph.D.
President, Grassroot Institute of Hawaii